

Members

Rep. William Crawford, Chairperson  
Rep. Charlie Brown  
Rep. Peggy Welch  
Rep. Timothy Brown  
Rep. Suzanne Crouch  
Rep. Don Lehe  
Sen. Patricia Miller  
Sen. Robert Meeks  
Sen. Ryan Mishler  
Sen. Sue Errington  
Sen. Vi Simpson  
Sen. Connie Sipes



## SELECT JOINT COMMISSION ON MEDICAID OVERSIGHT

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### MEETING MINUTES<sup>1</sup>

**Meeting Date:** October 22, 2008  
**Meeting Time:** 9:00 A.M.  
**Meeting Place:** State House, 200 W. Washington  
St., House Chambers  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 4

**Members Present:** Rep. William Crawford, Chairperson; Rep. Charlie Brown; Rep. Peggy Welch; Rep. Timothy Brown; Rep. Suzanne Crouch; Sen. Patricia Miller; Sen. Robert Meeks; Sen. Ryan Mishler; Sen. Sue Errington; Sen. Vi Simpson; Sen. Connie Sipes.

**Members Absent:** Rep. Don Lehe.

Chairperson Crawford called the meeting to order at 9:12 a.m. Chairperson Crawford reminded the Commission that seven affirmative votes are needed for the Commission to take action on a matter.

#### Incontinence Providers under Medicaid

Ms. Judy Bunn, representing the Association of Indiana Home Medical Equipment Services (AIHMES), stated that FSSA's previous responses to the Commission's questions

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

concerning the Medicaid incontinence supply program contract were simply a restatement of the contract and did not address the current concerns and status of the contract. FSSA's report states that 6,465 Medicaid recipients are receiving incontinence supplies, but the contract had estimated 11,000 Medicaid recipients would be using the services. Ms. Bunn questioned the cause of the low enrollment. Ms. Bunn also stated that FSSA has received complaints from only 36 members, but members have not been given a telephone number or other means to make these complaints. AIHMES has received twice that number of complaints. The complaints include the long waiting period before a person receives the supplies requested, as well as the amount of supplies received-- either too much or not enough. Recipients are not sure who to contact with their concerns. Ms. Bunn questioned FSSA's response that the 36 complaints FSSA had received had been satisfactorily resolved and asked whether the complainant would agree with this assessment. Ms. Bunn asked whether FSSA is achieving the savings it projected in limiting the number of supply vendors being used for the Medicaid program. See Exhibit 1 for Ms. Bunn's testimony and attachments.

Dr. Jeff Wells, Director of Medicaid, FSSA, provided the Commission with a handout concerning the Medicaid incontinence supplier contract. See Exhibit 2. Dr. Wells stated that the only Medicaid recipients affected by the incontinence supplier changes are the Care Select population of about 70,000 participants. Dr. Wells informed the Commission that FSSA has been looking into the complaints and has spoken with AIHMES. Dr. Wells stated that FSSA cannot take action if it does not know about the complaints. The incontinence supply contract contains a cap on the maximum quantity of a supply that FSSA will pay for an individual in a month. Dr. Wells further informed the Commission that the savings FSSA projected from the incontinence supply contract were included in FSSA's projected savings submitted to the federal government for the Healthy Indiana Plan 1115 demonstration waiver that was approved. When asked whether FSSA can provide Medicaid recipients who use incontinence supplies with a contact number for complaints, Dr. Wells stated that it could, but who to contact would depend on whether the complaint was a billing issue or a product issue. When asked about the implementation of the contract, Dr. Wells stated that the changes were phased in this summer over a six month time frame. FSSA will survey Medicaid recipients after six months of the program and annually thereafter.

Chairperson Crawford stated that the Commission was not going to take any official action at this time, but that the issue could be addressed during the legislative session with a bill if necessary.

#### Deficit Reduction Act Proposed Rules

Chairperson Crawford stated that Indiana is one of the few states that is not yet in compliance with the Federal Deficit Reduction Act (DRA). Chairperson Crawford asked FSSA: (1) whether Indiana had missed the federal deadline to come into compliance with the federal law; (2) why is Indiana not in compliance yet; and (3) do the proposed rules that FSSA has filed go beyond what the federal law requires and are the rules practicable and manageable.

Mr. Keith Huffman, President of the Indiana Chapter of the National Academy of Elder Law Attorneys, stated that FSSA's proposed DRA compliance rules are harsh and would hurt many Indiana residents seeking Medicaid assistance. Six proposals specifically address: (1) transfers of property -- gifts; (2) the return of gifts; (3) the timing period for penalties; (4) annuities; (5) personal services agreements; and (6) undue hardship exceptions.

First, the DRA requires Indiana to adopt new Medicaid rules concerning transfers of property. FSSA's proposed rule states that all gifts, no matter how small, made within the last five years before applying for Medicaid, can be added together to create a penalty period that begins running only when a person has entered a nursing home and the person is eligible for Medicaid. Other states have taken a less strict approach. Virginia ignores up to \$1100 per year in gifts and has a presumption that up to \$4000 worth of gifts are not transferred to qualify for Medicaid. Arizona does not count gifts of \$500 per month, and if a gift is for more than \$500, the purpose of the gift is reviewed. Federal law also gives states the discretion to impose the penalty for a gift once a person is eligible for Medicaid for nursing home care or when a person is in a nursing home applying for Medicaid. Indiana's proposed rules allow a penalty to start running only if the person is in a nursing home. Furthermore, FSSA's proposed rule is retroactive back to February 8, 2006.

Mr. Huffman also discussed how to treat returned gifts. FSSA's proposed rule requires the individual to return the entire amount that was gifted within the five-year look back period before the penalty period will be shortened. The DRA does not require this and Mr. Huffman stated that this is very unfair. Mr. Huffman suggested that Indiana should give full credit for the partial return of gifts since this is permissible under the DRA.

Mr. Huffman informed the Commission that federal law now requires a purchaser of an annuity to name Indiana as the primary or contingent beneficiary or be subject to a penalty period of time in which the person is ineligible for Medicaid. FSSA's proposed rule about annuities is retroactive and applies to a non-qualified annuity that was purchased on or after February 8, 2006. This proposal penalizes individuals who purchased annuities without a warning about the law change. Mr. Huffman recommended that this proposed rule apply prospectively and that customers be given notice about the beneficiary naming requirement.

Mr. Huffman further informed the Commission that FSSA's proposed rule addresses personal services agreements even though this subject was not addressed in the DRA. FSSA's proposed rule requires a prior written personal services agreement, even if the services are provided by a family member, and does not allow a personal services agreement to be entered into by a power of attorney or guardian.

Mr. Huffman testified that the DRA recognized that state implementation of this law would be difficult and required states to have undue hardship exceptions to allow states not to penalize for certain conduct. FSSA's proposed rules only allow for an individual to request an undue hardship within 20 days and requires the individual to prove that the individual has used every legal means to obtain return of the asset. Because an individual cannot request the return of a gift to a charity, the individual would be ineligible for the undue hardship exception. Mr. Huffman recommended rewriting the undue hardship proposed rule. See Exhibit 3 for Mr. Huffman's testimony.

Secretary Roob stated that the Commission discussed the changes that were required of the DRA at one of the Commission's meetings last year. Secretary Roob assured the Commission that his staff is meeting with the elder law groups and reviewing the public comments it has received concerning the proposed rules. Secretary Roob stated that any proposed rules would not be promulgated until 2009 and several changes will be made. Secretary Roob stated that he could not elaborate on any changes to the proposed rules until all of the information submitted has been reviewed by FSSA. In response to a question from a Commission member, Secretary Roob stated that the federal Centers for Medicare and Medicaid Services (CMS) have never questioned the state's timeliness in implementing the DRA provisions. See Exhibit 4.

### Closure and Conversion Fund

Secretary Roob made the following responses to the Commission's questions concerning the nursing home closure and conversion fund established as part of the negotiations with the nursing homes on the nursing home quality assessment fee:

1. What was the balance of the Closure and Conversion Fund at the end of Fiscal Year 2008: \$37.4 million
2. How much money from the fund was used and for what purpose? \$9.1 million for nursing home rate increases
3. What is the balance of the fund for Fiscal Year 2009? \$28.3 million
4. How much is projected to be used from the fund in 2009? \$22.3 million for moving from 5% to 7% increase in reimbursement
5. How much is left in the fund at end of Fiscal Year 2009: \$6 million
6. What is the account number of the fund? It does not have a separate account number.

Secretary Roob stated that the initial purpose of the fund to purchase Medicaid nursing home beds to remove them from the system was denied by CMS. Instead, FSSA and the nursing homes agreed that the money would be used for nursing home rate increases.

Mr. Vince McGowen, representing HOPE, agreed generally with Secretary Roob's comments about the closure and conversion fund, adding that the closure and conversion fund was never statutorily defined.

Chairperson Crawford commented that the statute that implemented the quality assessment fee required FSSA to report to the Commission at every meeting and that this has not been done.

Ms. Kitty Thode, representing twenty-two Waters of Indiana nursing homes, testified that the new Medicaid application is sixteen pages, replacing a two-page application before privatization. Redetermination calls are made without any notice and the process is difficult. Ms. Thode suggested that the long term care facilities should have a separate contact person to call with problems. See Exhibit 5 for a copy of Ms. Thode's handouts.

Senator Meeks read a letter from a constituent who is having problems getting an eligibility determination made under the new privatization system. Senator Meeks asked Secretary Roob why the system is so complicated and whether he thinks the system is working. Secretary Roob responded that the prior system had forty separate applications and that the new application is not asking for new information, just asking for the information up front at one time. Secretary Roob stated that August was the only month without a natural disaster in the state, and that FSSA is working hard.

Chairperson Crawford stated that the Commission requested deliverables from the contractor, First Data, that is reviewing the modernization contract. The Commission has not yet received the documents. Secretary Roob stated that his office has been busy working on the disasters in the state and disaster relief. Chairperson Crawford stated that

he feels there is a transparency problem with FSSA and that Indiana has paid out money on this contract and the deliverables should be available.

#### Managed Care Organization Review

Chairperson Crawford stated that the Commission has been provided with the review of the managed care organizations that was conducted. Senator Miller responded that it was her legislation that requested this review and asked who conducted the review. Chairperson Crawford stated that Stephanie DeKemper, John Cardwell, and Melanie Hobbs voluntarily conducted the review. See Exhibit 6.

#### Medical Informatics Update

Senator Dillon spoke about his involvement in this issue and said that he hopes that medical information technology would help improve patient care and save money. Chairperson Crawford commended Senator Dillon and FSSA for their work in this area.

Dr. Wells gave a Powerpoint presentation on Indiana's work on implementing medical informatics in Indiana. Dr. Wells stated that Indiana is one of the most advanced states in using electronic health records. See Exhibit 7 for the presentation.

#### Preliminary Drafts

PD 3214, Taxes on alcoholic beverages to fund health care, T. Brown. This PD increases the excise taxes on all alcoholic beverages, and establishes the health care fund to deposit the money and use the money as follows: (1) 25% to increase Medicaid reimbursement for physician providers in Medicaid; and (2) the remaining 75% for the disproportionate share hospital program, the health care for the indigent program, and the upper payment limit program. The Commission voted 7-6 to recommend the bill proposal.

PD 3391, Quality assessment fee extension, Crawford. This PD originally extended the nursing home quality assessment fee for one year. Rep. T. Brown moved that the assessment be extended until 2013, and the motion carried on a vote of 10-1. The Commission voted 10-1 to recommend the bill proposal, as amended.

PD 3404, Case manager assignment in eligibility determinations, Simpson. This PD requires the Division of Family Resources (DFR) to assign a state employee to each Medicaid, TANF, and food stamp application and to inform the applicant of the assigned employee's name and phone number. It also specifies that the state employee is responsible for the case until an eligibility determination is made. A Commission member asked how many case managers would need to be hired to meet these requirements and Sen. Simpson said she did not know. The Commission voted 9-2 to recommend this bill proposal.

PD 3403, Use of contractor for eligibility determinations, Crouch. This PD prohibits FSSA from using a contractor to make eligibility determinations in Medicaid, TANF, and food stamps in additional counties after November 1, 2008, until the Commission has reviewed the changes and status of the counties that have used the contractor before November 1, 2008. The Commission voted 7-4 to recommend this bill proposal.

PD 3393, Disproportionate share hospital (DSH) payments program study, Crawford. This PD requires the Office of Medicaid Policy and Planning to develop, maintain, and use a computer system to store specified DSH documents. It also establishes an interim study committee on Medicaid supplemental programs in 2009 to

study specified issues and requires the legislative evaluation and oversight policy subcommittee to study the DSH program in 2009. The Commission discussed whether a separate study committee was needed or whether this could be accomplished by the Commission. The Commission voted 11-0 to recommend this bill proposal.

PD 3395, Restoration of county offices of family resources, Errington. This PD eliminates the authority for DFR to replace county offices with regional offices and requires DFR to reorganize and restore any county offices that have been consolidated. The Commission voted 6-5, and the bill proposal was not recommended by the Commission. (Seven affirmative votes are required for the Commission to take action on a matter.)

PD 3392, Medicaid contract time frames, Simpson. This PD specifies that a four year limitation on Medicaid contracts includes contracts concerning eligibility determination and application processing for benefits. The Commission voted 6-5 and the bill proposal was not recommended by the Commission.

PD 3398, Requirements for FSSA contractors, Crawford. This PD requires a DFR or county office employee to directly assist an individual who goes to the county office seeking assistance in completing applications for programs serviced by the county office. It also sets forth requirements that FSSA must require of a eligibility determination contractor and requires FSSA to pay voluntary community assistance networks \$10,000 for assisting FSSA. The Commission voted 6-5 and the proposed bill was not recommended by the Commission.

See Exhibit 8 for a copy of the PDs considered by the Commission.

#### Final Report and Findings

Chairperson Crawford asked the Commission whether anyone had comments on the final report prepared by staff. A motion was made to approve the final draft with the inclusion of today's testimony and witnesses. The final report was approved 11-0. See Exhibit 9.

Chairperson Crawford informed the Commission that he has put together findings concerning the various topics discussed by the Commission over the interim. A Commission member questioned the language of one of the findings dealing with the CHIP program, and Chairperson Crawford stated that the finding would be removed. The remainder of the findings were approved by the Commission to be inserted into the final report. See Exhibit 10.

Senator Miller informed the Commission that she had FSSA prepare a document comparing Medicaid from 1990 through 2008. Senator Miller commended FSSA for all of the work that has been done on the state's Medicaid program. See Exhibit 11.

Chairperson Crawford thanked Senator Meeks for his long service on the Commission and for all of his work in the legislature.

The meeting was adjourned at 12:32 p.m.